

# Chapter 1

## Background

**C**hapter 1 provides background information about the pending consolidation Petition. Included is an outline of the changes that consolidation would bring about if the proposal is approved by both the Local Boundary Commission and voters in the Haines Borough. Additionally, information is provided about the Local Boundary Commission and the legal standards that govern consolidation of city and borough governments in Alaska.

Appendix A presents a glossary of terms used in this report that have special meanings in the context of the Haines consolidation proposal.

### A. Effects of Consolidation

The following summarizes the effects of the proposed consolidation on the structure of local gov-

ernment in Haines if the Local Boundary Commission and the voters approve the proposal.

- The Haines city government will be dissolved. The area within the former City will be reconstituted as the Townsite Service Area of the new consolidated borough. The consolidated borough will provide the following services within the Townsite Service Area:
  - ◆ police;
  - ◆ fire protection, prevention, and safety;
  - ◆ animal control;
  - ◆ water utility service;
  - ◆ sewer utility service; and
  - ◆ street and road maintenance.
- The third class Haines Borough will be dissolved and reconstituted as a home rule borough.
- A separate seven-mem-

ber borough school board will be established (currently, the Haines Borough Assembly also serves as the school board).

- The new borough will exercise the following additional powers on an areawide basis:<sup>25</sup>
  - ◆ planning, platting, and land use regulation (currently, approximately 85% of Haines Borough residents receive such services from one of three local governmental units

<sup>25</sup> Although the listed functions are described as “additional powers” many residents of the Haines Borough currently receive those services under the existing local governmental structure. The Responsive Brief of the Haines Borough even asserts that it currently exercises a number of the listed powers on an areawide basis (hazardous substances, library services, museum, elections, and community youth development areawide). However, as a third class borough, State law (AS 29.35.220[b]) prohibits the Haines Borough from exercising any areawide power except education and tax assessment/collection.

[City of Haines with 75.7% of the Borough's population, Mud Bay Land Use Service Area with 155 residents or 6.5% of the Borough's population, and Lutak Land Use Service Area with 65 residents or 2.7% of the Borough's population]);

- ◆ control of hazardous substances, disaster planning, and emergency response (currently all Haines Borough residents receive this service; the City provides it within its 20.9 square mile jurisdiction and the Borough provides it within the remainder of the Borough);
- ◆ emergency medical service (currently, an estimated 99.6% of the Haines Borough residents receive this



*Emergency dispatch center in Haines.*

- service which is exercised by the Haines Borough on a service area basis; the service area includes the City of Haines and other inhabited parts of the Haines Borough except Excursion Inlet);
- ◆ emergency dispatch service (currently an estimated 99.6% of the Haines Borough residents receive this service on the same basis as the emergency medical service);
- ◆ ports and harbors (currently, these powers are exercised only by the City of Haines, which is inhabited by 75.7% of the Borough residents; non-City residents of the Borough arguably benefit from the service either directly or indirectly to the same extent as City residents; the Haines Borough has established a ports and harbors service area but it has never been operational);
- ◆ financing capital improvement projects (currently 100% of the residents of the Haines Borough receive this

- service which is exercised both by the City of Haines and the Haines Borough);<sup>26</sup>
- ◆ public parks and recreational facilities (currently 75.7% of the residents of the Haines Borough receive this service which is provided by the City of Haines; non-City residents arguably enjoy the benefits of this service to the extent that they utilize City parks and recreational facilities);
  - ◆ public libraries (currently 100% of the Haines Borough residents receive this service which, because of limitations
  - on the powers of a third class borough, must be characterized as being carried out under the Borough's education power);
  - ◆ public museums (currently 100% of the Haines Borough residents receive this service which, because of limitations on the powers of a third class borough, must be characterized as being carried out under the Borough's education power);
  - ◆ cemeteries (this service is provided by the City of Haines and is available without regard to place of residence);
  - ◆ economic development (currently, this power is exercised only by the City of Haines which is inhabited by 75.7% of the Borough residents – arguably, residents of the Borough outside the City benefit from the service as well); and
  - ◆ solid waste management (currently, the Haines Borough exercises this power on a service area basis, 100% of the Borough residents reside within the service area, the City of Haines also exercises certain solid waste management powers).<sup>27</sup>

<sup>26</sup> DCED does not view “financing capital improvement projects” per se as a specific power. Rather it may be an element of other powers which the local government is authorized to provide. For example, the City of Haines can finance improvements to its parks, harbor, and utilities under those respective powers. It would seem improper, however, for the City to fund improvements to the Haines Public Library because it is regarded as a school facility operated by the Haines Borough. In that the City lacks the power to establish, operate, and maintain school facilities, it is difficult to conceive how it could finance improvements for such facilities.

<sup>27</sup> Reference to the Solid Waste Management Service Area was inadvertently omitted from the Petition. Solid waste is a matter of borough-wide interest and is currently dealt with on a service area basis only because of the restrictions placed on the third class borough. The existing Solid Waste Management Service Area serves all of the residents of the Haines Borough. Given these circumstances, DCED takes the view that the Commission should correct the inadvertent omission by adding solid waste to the list of areawide powers to be exercised by the proposed consolidated borough. Additionally, the Solid Waste Management Service Area should be added to the list of service areas that would be dissolved upon consolidation.

- The following existing borough service areas would be dissolved:
  - ◆ Docks and Harbors Service Area;
  - ◆ Medical Service Area;
  - ◆ Mud Bay Land Use Service Area;
  - ◆ Lutak Land Use Service Area;
  - ◆ Solid Waste Management Service Area; and
  - ◆ service areas created for the establishment of local improvement districts.<sup>28</sup>
- The following existing borough service areas will remain in place:
  - ◆ Fire Service Area Number 1;
  - ◆ Fire Service Area Number 2;
  - ◆ Fire Service Area Number 3;
  - ◆ Four Winds Subdivision Road Maintenance Service Area;
  - ◆ Twenty-Five Mile Road Maintenance Service Area;
  - ◆ Chilkat State Park Road Maintenance Service Area;

- ◆ The Historic Dalton Trail Road Maintenance Service Area;
- ◆ Letnikof Subdivision Road Maintenance Service Area; and
- ◆ Riverview Drive Road Maintenance Service Area.

### **B. Local Boundary Commission (LBC or Commission)**

Petitions for consolidation of local governments in

Alaska are subject to approval by the LBC. The Commission is a State board with jurisdiction throughout Alaska. (See Article X, § 12, Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, and AS 44.33.810 - 44.33.828.) In addition to petitions for consolidation of municipal governments, the LBC acts on petitions for the following:



- annexation to cities and boroughs;
- incorporation of cities and boroughs;
- detachment from cities and boroughs;
- merger of cities and boroughs;
- dissolution of cities and boroughs; and
- reclassification of cities.

Additionally, the LBC has the duty to make studies of local government boundary problems.

The Commission consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, “... *on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership.*” (AS 39.05.060)

<sup>28</sup> Existing local improvement districts would remain in place until the costs of the improvements for which they were formed are paid. However, it would no longer be necessary for the Borough to maintain service areas to administer a local improvement district.

Members serve at the pleasure of the Governor. The Chairman is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation.

Biographical information about the current members of the LBC is provided in Appendix B.

### **C. Communications with the LBC**

The LBC is a quasi-judicial board. To protect the rights of petitioners and others to due process and equal protection, 3 AAC 110.500 prohibits private (ex parte) contact with the Commission regarding pending petitions. The law prohibits such

communication between the LBC and others, apart from the Commission's staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision under 3 AAC 110.580. Written communications to the Commission must be submitted through its staff.

### **D. Staff to the Commission**

The Alaska Department of Community and Economic Development (DCED) serves as staff to



the LBC. The DCED staff to the Commission is required by law to evaluate petitions filed with the LBC and to issue reports and recommendations to the Commission concerning such. The DCED staff serving the Local Boundary Commission may be contacted at:

Local Boundary Commission  
550 West 7th Avenue,  
Suite 1770  
Anchorage, Alaska 99501-3510  
Telephone: 907-269-4559

Fax: 907-269-4539

E-mail:

[Dan\\_Bockhorst@dcled.state.ak.us](mailto:Dan_Bockhorst@dcled.state.ak.us)

The Local Boundary Commission and the Alaska Department of Community and Economic Development are independent of one another with regard to policy matters.



*Local Boundary Commission at a recent hearing.*

# Chapter 2

## Proceedings to Date & Future Proceedings

**T**his chapter summarizes the formal activities that have occurred to date with regard to the pending Haines consolidation proposal. Information about future proceedings is also provided.

### A. Consolidation Petition Accepted for Filing

As allowed by 3 AAC 110.410(a)(4), the City of Haines petitioned the Local Boundary Commission for consolidation of the City of Haines and the Haines Borough.<sup>29</sup> The Petition was submitted to DCED on December 27, 2000. On January 5, 2001, DCED completed its technical review of the form and content of the Petition. Based on that review, the Petition was formally accepted for filing.

### B. Notice of Filing of the Petition

The Chairman of the LBC set March 9, 2001, as the deadline for receipt of responsive briefs and comments on the Petition. Notice of filing of the Petition was published by the Petitioner in the *Chilkat Valley News*, a newspaper of general circulation in the territory, on January 11, January 18, January 25, and February 1, 2001.<sup>30</sup>

Public notice of the filing of the Petition was also published by DCED on the *State of Alaska Online Public Notices* web page from January 16, 2001, through

March 9, 2001. The notice was also published on the LBC Internet web site maintained by DCED.

In addition to publishing the notice, the Petitioner delivered requests for public service announcements of the filing of the Petition to KHNS, the local public radio station. Further, the Petitioner also posted notice of the filing of the Petition at the following locations on January 10, 2001:

- Haines Municipal Building;
- Haines Borough Building;
- Haines Public Library;
- Haines Post Office;
- Howsers Supermarket;
- Mosquito Lake School; and
- Covenant Life Center.

<sup>29</sup> "Consolidation" is defined by AS 29.71.800(6) as "dissolution of two or more municipalities and their incorporation as a new municipality."

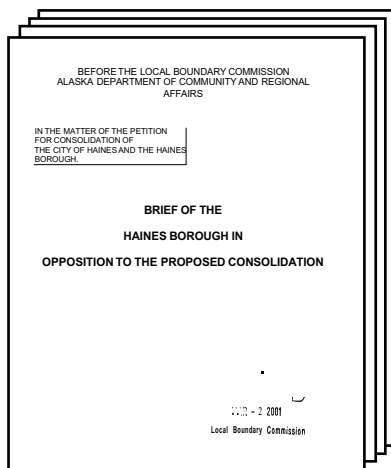
<sup>30</sup> The notice published in the *Chilkat Valley News* on January 11, 2001 was slightly smaller than the minimum size prescribed by 3 AAC 110.450(a)(1). The Petitioner subsequently fulfilled the requirements of 3 AAC 110.450(a)(1) through three consecutive weekly publications of the notice as a display advertisement of the proper size.

In addition to publishing and posting the notice, the Petitioner mailed or hand-delivered a copy of the notice to the Haines Borough on January 11, 2001.

On January 2, 2001, DCED provided notice of the filing of the Petition to 93 potentially interested individuals and organizations.

### C. Responsive Brief and Public Comments Filed

One formal responsive brief was filed in this proceeding – the *Brief of the Haines Borough in Opposition to the Proposed Consolidation* (hereinafter, “Responsive Brief”). The Responsive Brief consists of 155 pages, including a nineteen-page brief and 136 pages of supporting documents.



*Haines Borough Responsive Brief.*

In addition to the Responsive Brief, eleven sets of written comments were filed with the LBC by the March 9, 2001 deadline. These consist of comments from:

- Louis O. Nelson and nine other individuals (one-page letter with two pages of attachments);
- Robert A. and Margaret E. Andrews (one-page letter);
- Margaret H. Piggott (one-page letter);
- Ron Weishahn (two-page letter);
- Richmond W. Tolles (one-page letter);
- Gene Kennedy (one-page letter);
- Laurie Dadourian (one-page letter);
- Carolyn Weishahn (one-page letter);
- Scott Carey (three-page letter);
- Michael D. Ward (two-page letter); and
- Ron Jackson (one-page letter).

### D. City's Reply Brief Filed

On April 10, 2001, the City of Haines filed the

*Petitioner's Reply Brief to the Brief of the Haines Borough and Comments in Opposition to the Proposed Consolidation* (hereinafter “Reply Brief”) in answer to the Borough's Responsive Brief and written comments on its Petition. A corrected version of the Reply Brief was filed on April 12, 2001. The Reply Brief consists of eight pages.

### E. DCED's Preliminary Report

In accordance with 3 AAC 110.530, DCED prepared this Preliminary Report examining the pending Petition. The Preliminary Report was provided to the Petitioner and Respondent as required by law. Additionally, DCED has distributed the report to other interested individuals and organizations, including the correspondents.

3 AAC 110.640 provides that at least 28 days must be allowed for comment on the Preliminary Report from the date that the report was mailed to the Petitioner. The deadline for the receipt by LBC staff of written comments on the Preliminary Report in this case has been set for August 10, 2001 at 5:00 p.m.



Comments may be submitted by mail, hand delivery, fax, or e-mail. To be considered, comments must be received by the previously noted deadline at the following location:

LBC Staff  
Department of Community and  
Economic Development  
550 W. 7th Avenue, Suite 1770  
Anchorage, AK 99501-3510  
fax: (907) 269-4539  
e-mail: Dan\_Bockhorst@dced.state.ak.us

### **G. Pre-Hearing Requirements**

As described in Section H, the Petitioner and Respondent will be allowed to present sworn testimony during a public hearing on the consolidation proposal to be conducted by the Local Boundary Commission in Haines.

testify, and the estimated time anticipated for the testimony of each witness.

### **H. LBC Public Hearing**

The Local Boundary Commission will hold at least one public hearing on the consolidation proposal in Haines. No hearing has yet been scheduled. Formal notice of the hearing will be published at least three times. The initial publication will occur at least thirty days prior to the hearing. Public notice of the hearing will also be posted in prominent locations and will be mailed to the Petitioner and Respondent as required by law.

The hearing will begin with a summary by DCED staff of its conclusions and recommendations concerning the pending proposal.

Following DCED's summary, the law allows the Petitioner to make an opening statement in support of its Petition. The Petitioner's opening statement will be limited to ten minutes.

Although the law does not expressly make provision for an opening statement by

### **F. DCED's Final Report**

After DCED has considered timely written comments on its Preliminary Report, it will issue its Final Report on the matter. The Final Report will be mailed to the Petitioner and Respondent at least three weeks prior to the Commission's hearing on the proposal as required by law. The Final Report will also be distributed to the correspondents and other interested individuals and organizations in this proceeding.

Witnesses providing sworn testimony must have expertise in matters relevant to the pending consolidation proposal about which they will testify. Such might include, for example, long-standing community members who are directly familiar with social, cultural, economic, and other relevant characteristics of the region. At least fourteen days prior to the hearing, the Petitioner and Respondent must submit to DCED a list of witnesses that each intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will



respondents, the Commission invariably exercises its discretion to extend such courtesy to respondents. The Haines Borough should expect to be invited to make an opening statement not to exceed ten minutes.

Following the opening statements, the Commission will receive sworn testimony whether the pending consolidation proposal meets the legal standards for consolidation and whether the Petition should be granted.

The testimony phase of the hearing begins with sworn witnesses providing testimony on behalf of the Petitioner. Sworn witnesses providing testimony on behalf of the Respondent follow. The LBC Chairman will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Because the Petitioner bears the burden of proving that its Petition meets the standards and should be approved, the Petitioner will have the opportunity to provide sworn responsive testimony to refute testimony of the Respondent. Again, the Petitioner's rebuttal witnesses must have expertise in matters



#### Members

*Kevin Waring  
Chairperson  
At-Large*

*Kathleen Wasserman  
Vice-Chairperson  
First Judicial District*

*Member  
Second Judicial District*

*Allan Tesche  
Member  
Third Judicial District*

*Archie Lynch  
Member  
Fourth Judicial District*



## Agenda

### Haines Consolidation Hearing

- I. Public hearing on the Haines consolidation petition
  - A. Summary of DCED's report & recommendations
  - B. Opening statement by the Petitioner (limited to 10 minutes)
  - C. Opening statement by the Respondent (limited to 10 minutes)
  - D. Sworn testimony of witnesses called by the Petitioner
  - E. Sworn testimony of witnesses called by the Respondent
  - F. Sworn responsive testimony of witnesses called by the Petitioner
  - G. Period of public comment by interested persons (limited to 3 minutes per person)
  - H. Closing statement by the Petitioner (limited to 10 minutes)
  - I. Closing statement by the Respondent (limited to 10 minutes)
  - J. Reply by the Petitioner (limited to 5 minutes)
- II. Decisional session (optional at time of hearing)

*Draft hearing agenda.*

relevant to the proposed consolidation about which they intend to testify.

The laws governing the Commission's hearing make no provision for cross-examination of witnesses by the Petitioner or Respondent. However, a member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

Upon conclusion of the testimony phase of the hearing, the Commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the Commission may question persons providing public comment.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to

exceed ten minutes. Next, the Respondent is allowed to make a closing statement.

Again, because the Petitioner bears the burden of demonstrating that its Petition should be granted, the City is allowed to make a five-minute reply to the closing statement of the Respondent.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by DCED and others.

The draft hearing agenda is shown on the previous page.

In compliance with Title II of the Americans with Disabilities Act of 1990, DCED will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact DCED's staff to the Commission at 269-4560 at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the Commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

Upon request, and if local facilities permit, arrangements can be made to connect other sites to the hearing by teleconference.

## **I. LBC Decisional Meeting**

The LBC must render a decision within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to properly judge the merits of the consolidation proposal following the hearing, the LBC may convene a decisional session immediately upon conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

Within thirty days after the Commission has rendered its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the Haines consolidation Petition. A copy of the statement will be provided to the Petitioner, Respondent, and any others who request a copy.



*Public comment during a recent LBC hearing.*

## **J. Reconsideration**

Any interested person or organization may ask the Commission to reconsider its decision in this matter. A request for reconsideration may be filed within twenty days after the written decisional statement has been mailed to the Petitioner and Respondent.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. Typically, the LBC will reconsider a decision only if:

(1) there was a substantial procedural error in the original proceeding;

(2) the original vote was based on fraud, misrepresentation, or material error of fact or law; or

(3) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the

Commission grants a request for reconsideration, the Petitioner may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

## **K. Election**

If the Commission approves the Petition for consolidation of local governments in Haines, the Director of the Division of Elections for the State of Alaska will be notified in accordance with AS 29.06.140 following the conclusion of the opportunity for reconsideration. The Director of the Division of Elections must then order a consolidation election within thirty days of the notice. The election must be conducted not less than thirty or more than ninety days after the election order.

If voters approve the proposition for consolidation, the Director of the Division of Elections must then conduct a subsequent election for the selection of officials of the consolidated borough as required by AS 29.06.140(c). As proposed in the Petition, the new officials would consist of one mayor, six assembly members, and seven school board members.

The Federal Voting Rights Act (43 U.S.C. 1973) applies to municipal consolidations and other municipal boundary changes in Alaska. The Voting Rights Act forbids any change affecting voting rights that has the purpose or effect of denying or abridging the right to vote based on race. If the consolidation proposal is approved by the LBC, the U.S. Department of Justice or U.S. District Court in Washington D.C. must review the consolidation proposal, method of the consolidation election, and the proposed date for the consolidation election. Review by the Justice Department typically takes about sixty-five to seventy days, although expedited review may be requested.

## **L. Judicial Appeal**

A decision of the LBC may be appealed to Superior Court. The appeal must be made within thirty days after the last day on which the Commission may order reconsideration. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)

### **E. Legal Standards for Consolidation**

Applied to the Haines consolidation Petition, AS 29.06.130(a) provides that the Local Boundary Commission:

- 1) may amend the Petition;
- 2) may impose conditions for consolidation;
- 3) *may* approve the Petition *if* the LBC determines that the consolidation proposal, with or without amendments and conditions:
  - a) meets applicable standards under the Constitution of the State of Alaska,

- b) meets standards for consolidation under AS 29.06.130(a) which, in this case, require the satisfaction of the standards for borough incorporation under AS 29.05.031,
- c) meets applicable standards under the Alaska Administrative Code (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060), *and*
- d) is in the best interests of the state;
- 4) *shall* deny the Petition *if* the LBC determines that the consolidation proposal, with or without

amendments and conditions:

- a) does not meet applicable standards under the state constitution,
- b) does not meet standards for borough incorporation under AS 29.05.031,
- c) does not meet applicable standards under the Alaska Administrative Code; *or*
- d) is not in the best interests of the state.

Chapter 3 of this report deals with the specific criteria and principles summarized above.